

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

OP.No. 4539 of 2003(M)

PETITIONERS:

- 1. THE VICAR OF ST. GEORGE ORTHODOX
SYRIAN CHURCH, MATTANCHERY AT PRESENT
REV.FR.SHIBU.K. JOSE, S/O. JOSE.**
- 2. THE STEWARD OF THE ST.GEORGE
ORTHODOX SYRIAN CHURCH MATTANCHERY AT
PRESENT M.G. MATHEW, S/O. GHEEVARGHESE.**

**BY ADV. SRI.BIJU ABRAHAM,
SRI. B.G. BHASKAR.**

RESPONDENTS:

- 1. T.V. THOMAS, S/O. VAREED,
THOZHUPADAN HOUSE, HOUSE NO.44/1879,
MAYANKARAPARAMBU, N.H.G. ROAD, VYTTILA P.O.,
PONNURUNNI, KOCHI-19.**
- 2. AZZES, C.C. V/451, M.A.S.S. ROAD,
ELANJIMUKKU, MATTANCHERY, COCHIN-2.**

BY ADV. SRI.K.M.FIROZ.

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON C.M.P. NO. 8039/2003 IN O.P. NO. 4539/2003

DISMISSED

30/03/2007.

SD/- KURIAN JOSEPH, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PLAINT IN O.S. 231/2002 BEFORE THE MUNSIFF COURT, KOCHI.

EXT.P.2: COPY OF THE WRITTEN STATEMENT FILED BY THE R.1. IN O.S. 231/2002 BEFORE THE MUNSIFF'S COURT, KOCHI.

EXT.P.3: COPY OF THE OBJECTION FILED BY THE PLAINTIFFS AGAINST ISSUE NO. 1 IN O.S. 231/02 BEFORE THE MUNSIFF COURT, KOCHI.

EXT.P.4: COPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER, MATTANCHERRY DTD. 24/01/97 TO THE R.D.O, FORT KOCHI.

EXT.P.5: COPY OF THE ORDER OF THE PRINCIPAL MUNSIFF COURT, KOCHI DTD. 12/12/2002 IN O.S. NO. 231/2002.

EXT.P.6: COPY OF THE NOTICE ISSUED BY THE LAND TRIBUNAL, ERNAKULAM, TRIPUNITHURA DTD. 04/01/2003.

//TRUE COPY//

prv.

KURIAN JOSEPH, J.

O.P.NO.4539 OF 2003

Dated this the 30th day of March 2007

JUDGMENT

Writ petition is filed aggrieved by Ext.P4 order passed by the Munsiff Court, Kochi in O.S.231/02 whereby the Munsiff Court referred the question of Kudikidappu to the Land Tribunal for a finding. It is the contention of the petitioner that such a question does not arise in the suit. The suit is filed for recovery of possession with arrears of rent, damages, etc. It is seen from Ext.P2 written statement that the defendants/respondents herein have denied the title of the plaintiff.

“The plaintiff church had never got any right over plaint schedule property. It is equally false to say that Anna had been the tenant of the landlord, plaintiff church. There is no and there had never been any landlord-tenant relationship between the said Anna and the plaintiff”

2. On the basis of such a denial, the Munsiff Court should have considered the question as to whether the issue of Kudikidappu arises at all, for being decided by the Land

Tribunal. It is now settled that only if such a question arises, the Civil Court need make a reference under Section 129(3) of the Kerala Land Reforms Act to the Tribunal. In situations where the defendants even denied title of the land lord and denied the landlord-tenant relationship whether such a question arises, is a question to be considered by the Civil Court. Ext.P5 order is set aside with a direction to the Munsiff Court, Kochi to consider the matter afresh.

Writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE

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